

Creator: Diane; . Killian-Allan
% Rural Route 1152 W 475 S
Farmington, Utah zip Exempt
without the United States

John Carl Ynchausti
COUNTY OF DAVIS
DBA: DAVIS COUNTY JUSTICE COURT
KEY PRINCIPAL: Bret Milburn
DUNS #: 072979032
800 WEST STATE STREET
FARMINGTON, UT 84025

Case: 1:22-cv-00117
Assigned To : Romero, Cecilia M.
Assign. Date : 09/09/2022
Description: Allan v Hanson et al

CITY OF FARMINGTON

Alleged Plaintiff,
VS.

DIANE KILLIAN ALLEN,
Alleged Defendant

Request to Submit for Decision
(Utah Rule of Civil Procedure 7)

1. The Motion to Dismiss was filed on April 12, 2022 and second Motion to Dismiss filed on May 20, 2022.
2. A memorandum opposing the motion was not filed in either case.
3. I demand/desire that the motion be submitted for decision for the court to review and issue a decision.

Alleged Defendant / Respondent

I declare under criminal penalty under the law of Utah that everything stated in this document is true. Signed at Davis County, Utah

By: Diane Killian-Allen

Date 6-8-22

Signature Printed Name

CITY OF FARMINGTON

Alleged Plaintiff,

VS.

DIANE KILLIAN ALLEN,

Alleged Defendant

) DAVIS COUNTY JUSTICE COURT,
) IN THE 2nd JUDICIAL DISTRICT COURT
) COUNTY OF DAVIS
)
) Farmington, Utah
)

MOTION TO DISMISS

Now Comes Diane: Killian-Allan, alleged defendant, by special appearance, not submitting to the Court's jurisdiction, who hereby moves this Court to dismiss the complaints filed by officer DANE HANSEN AND ERIC JOHNSEN for lack of ratification of commencement, no corpus delicti, no plaintiff, lack of jurisdiction over the person, lack of jurisdiction over the subject matter, insufficiency of service of process. Grounds are set forth below.

1. **Objection for Lack of Ratification of Commencement.** There is no claim.

**FEDERAL AND STATE RULES OF CIVIL PROCEDURE
 RULE 17(a) Real Parties in Interest:**

"Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought; and when a statute of the United States so provides, an action for the use or benefit of another shall be brought in the name of the United States. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest."

Rule 17 (a) Plaintiff and Defendant; Real Party in Interest, ---

Every civil action shall be prosecuted in the name of the real party in interest, but an executor, administrator, guardian, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another and a party authorized by statute may sue in their own names in such representative capacity without joining the party for whose benefit the action is brought. When a statute so provides, a civil action for the use or benefit of another shall be brought in the name of the State of Utah.

FEDERAL RULES OF CIVIL PROCEDURE (F.R.C.P.), RULE 1:
"There is one form of action – the civil action."

URPC Rule 2

There shall be one form of action to be known as "civil action".

There is neither an injured party nor trespass. As all crimes are commercial, (27 CFR 72.11) and every alleged crime has to have "nature and cause", and be prosecuted in the name of the people of the state as a [the] REAL PARTY IN INTEREST -- NOT the "PEOPLE OF THE STATE OF UTAH" or the People of the State of Utah, or CITY OF FARMINGTON, as that is the corporation and is an impossibility.

2. There is no corpus delecti. Crime is a breach of laws or governing authority. While this alleged "offense" or "infraction" was a violation of the "Codes" it was not a crime. As my limited comprehension permits, these matters are criminal. Notwithstanding, proof of the corpus delecti is required in all criminal matters:

"Proof of the *corpus delecti* is required in **all criminal cases**...There are three basic elements in the proof of a crime: (1) the occurrence of loss or injury, (2) criminal causation of that loss or injury and (3) the identity of the defendant as the perpetrator of the crime. However, it is firmly established in this State that the term *corpus delecti* embraces only the first two of these elements-loss or injury and criminal causation." State v. Hill, 221 A.2d 725, 728. (emphasis added)

"It is true that the above are all cases of felonious homicide, but the doctrine [of corpus delecti] is in nowise peculiar to such cases; it is **equally applicable to all criminal cases**." State v. Gelzeiler, 128 A. 240 (emphasis added)

3. There is no plaintiff. This is an adversarial proceeding, and as it is to the alleged defendant's limited comprehension, adversarial proceedings require *real* adversaries:

"Properly understood the general principle is sound, for courts only adjudicate justiciable controversies... **courts must look behind names that symbolize the parties** to determine whether a justiciable case or controversy is presented." United States v. Interstate Commerce Commission, 337 U.S. 426 (1949). (emphasis added)

FEDERAL RULES OF CIVIL PROCEDURE (F.R.C.P.), RULE 17:

"An action must be prosecuted in the name of the real party in interest"

"CITY OF FARMINGTON" is the name of a Corporate Fiction. A Corporate Fiction cannot make claims. There is no real party, therefore there is no plaintiff with any claim or standing.

4. Lack of evidence alleged Defendant was operating a "vessel" in "commerce". It has not been established that the alleged Defendant is subject to this private code by way of explicit or implied contract. Alleged Defendant's acceptance of said alleged "offense" in citation form, was under duress for fear of arrest, and was not meant to be a contract with the "CITY". There has been no sworn affidavit of probable cause shown to prove that the alleged Defendant was operating in commerce and no verified complaint from an injured party saying such. If fact, the impeding officer was informed that I was traveling in a private, "NON-COMMERCIAL CAPACITY" which the Officer ignored.

"The right of the citizen to travel upon public highways and to transport his/her property thereon, either by carriage or automobile, is not a mere privilege which a City/State may prohibit at will, but a common right which he/she has under the right to Life, Liberty, and the Pursuit of Happiness." Thompson v. Smith 154 SE 579.

"The use of the highway for the purpose of travel and transportation is not a mere privilege, but a common and fundamental right which the public and individuals cannot be rightfully deprived." Chicago Motor Coach v. Chicago, 337 ILL200,169 NE 22, 66 ALR 834. Ligare v. Chicago 139 Ill. 46, 28 NE 934. Booney v. dark, 214 SW 607; 25 A M JUR (I'1) Highways, Sec. 163.

"For a crime to exist, there must be an injured party. "There can be no sanction or penalty imposed on one because of this exercise of Constitutional rights." Sheer v. Cullen, 481 F. 945.

"The right to travel is part of the Liberty of which the citizen cannot be deprived without due process of law under the Fifth Amendment." Kent v. Dulles 357 U.S. 116, 125.

"Where rights are secured by the Constitution are involved, there can be no rule-making or legislation which would abrogate them." Miranda v. Arizona 384 U.S. 436, 125

"The claim and exercise of a Constitutional right cannot be converted into a crime." Miller v. U.S. 230 F 2nd 486, 489.

"Under our system of government upon the individuality and intelligence of the citizen, the state" does not claim to control him/her, except as his/her conduct to others, leaving him/her

the sole judge as to all that affects himself/herself." Mugler v. Kansas 123 U.S. 623, 659-60.

5. Lack of evidence the "Codes" apply to the "alleged Defendant" -

"Farmington City was incorporated as a municipal corporation on November 21, 1892. Farmington City is a political subdivision of the state of Utah and may be referred to as "Farmington City, a municipal corporation"

I am not a subject, person, resident, inhabitant, employee, or citizen, owing duties and obligations to the persons operating as the municipal corporation, doing business as, the "City of Farmington" -Dun & Bradstreet Number 051537033, or to any other municipal corporation; nor does my physical location on the geographic region referenced as Farmington, make me a subject or citizen, owing duties and obligations, to the municipal corporation known as the City of Farmington, or to any other municipal corporation.

6. Lack of jurisdiction over the person. This court has been deprived of Personal Jurisdiction by failing to properly issue Process for DIANE KILLIAN ALLEN or Diane: Killian-Allan (valid verified complaint and Summons) and the alleged plaintiff, a FICTION, has failed to provide alleged Defendant Service of Process, in violation of Federal Rules of Civil Procedure Rules 3 and 4. On the citation, there is a deadline date given for court. That makes the citation and summons. Once given to me by Dane Hanson and Eric Johnsen, Dane Hanson and Eric Johnsen were then in violation of multiple Federal Rules for Civil Procedure.

F.R.C.P Rule 3 - Commencing an Action - 4. "This rule provides that the first step in an action is the filing of the complaint.

F.R.C.P. Rule 4 - Summons - (c) (2) By Whom. Any person who is at least 18 years old and not a party may serve a summons and complaint.

F.R.C.P. Rule 4 - Summons - (a) CONTENTS; AMENDMENTS (1) Contents. A summons must: (F) be signed by the clerk; and (G) bear the court's seal.

URCP Rule 4 Process - Personal Service (d) (1) The summons and complaint may be served by any person 18 years of age or older at the time of service and not a party to the action or a party's attorney.

Since Dane Hanson and Eric Johnsen are disqualified from being witnesses or parties to the action because they served the citation/summons, therefore there is no plaintiff, and the "Prosecuting

Attorney” would be in violation of F.R.C.P Rule F.R.C.P Rule 17 and UCRP 12 (b) (2)if he were to make a claim, it is only myself left in this case with no valid, verified complaint against me and no Probable Cause.

7. Lack of jurisdiction over subject matter. This matter is filed in the name of a Corporate Fiction the CITY OF FARMINGTON and the CITY OF FARMINGTON can't make claims and do things, so the municipal employee that filed this document against the alleged Defendant in the name of a FICTION, not only deprives this Court of SUBJECT MATTER jurisdiction, it's FORGERY, COUNTERFEITING, FRAUD, SECURITIES FRAUD, and BARRATRY!

UCRP 12 (h) (2) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

“Rule UCRP 12 (b) - Defenses and Objection-How Presented-By Pleading or Motion-Motion for Judgement on the Pleadings

I hereby state for the record, I do not consent to give jurisdiction over I, a woman. Therefore, this court lacks subject matter jurisdiction as there is no party with STANDING. No party with STANDING claiming an injury means there is no subject matter jurisdiction and the Court can't hear the matter!

8. Insufficiency of Service of Process. As briefly touched on in point 6, the alleged Defendant was not properly served and CLEARFIELD CITY did violate URCP Rule 4 (a) the police officer issued the summons and it was not signed by the Plaintiff or Plaintiff's Attorney. URCP 4 (c) (1) (a) The summons “MUST” contain the name and address of the court, the names of the parties to the action, and the county in which it is brought; and (c) state the name, address and telephone number of the plaintiff's attorney, if any, and otherwise the plaintiff's address and telephone number. The summons DID NOT contain the addresses and phones numbers of the court, the plaintiff and/or the plaintiff's attorney. All of which together show cause for the insufficiency of service of process.

GENERAL RESERVATION OF RIGHTS
OF Diane: Killian-Allan

Please be advised that My use of the phrase "All Rights Reserved without Prejudice" above My autograph on this document means:

(1) that I explicitly reject any and all benefits of the Uniform Commercial Code, absent a valid commercial agreement which is in force and to which I am a party, and cite its provisions herein only to serve notice upon ALL agencies of government, whether international, national, state or local, that they, and not I, are subject to, and bound by, all of its provisions, whether cited herein or not;

(2). that My explicit reservation of Rights has served notice upon ALL agencies of the government of the "Remedy" which they must provide for Me under Article 1, Section 308 (old 1- 207) of the Uniform Commercial Code, whereby I have explicitly reserved My Common Law Right not to be compelled to perform under any contract or commercial agreement that I have not entered into knowingly, voluntarily, and intentionally;

(3). that My explicit reservation of Rights has served notice upon ALL agencies of government that they are ALL limited to proceedings against Me only in harmony with the Common Law and that I do not, and will not accept the liability associated with the "compelled" benefit of any unrevealed commercial agreements; and

(4). that My valid reservation of Rights has preserved all My Rights and prevented the loss of any such Rights by application of the concepts of waiver or estoppel.

Conclusion

This court's swift response to dismiss the citations WITH PREJUDICE avoids the conclusion that this court is willfully involved with 18 U.S. Code § 241 - Conspiracy against rights; 18 U.S. Code § 242 - Deprivation of rights under color of law; 18 U.S. Code § 1341 - Frauds and swindle; 18 U.S. Code § 1342 - Fictitious name or address; 18 U.S. Code § 2071 - Concealment, removal, or mutilation generally; 18 U.S. Code § 2073 - False entries and reports of moneys or securities; 18 U.S. Code § 513 - Securities of the States and private entities; 18 U.S. Code § 514 - Fictitious obligations; 18 U.S. Code § 876 - Mailing threatening communications; 18 U.S. Code § 1001 - Statements or Entries Generally.

It is reasonable to assume that these judicial decisions are straight and to the point, that there is no lawful method for government to put restrictions or limitations on rights belonging to

the people. There is no question that a citation/ticket issued by a police officer, for no driver's license, current vehicle registration, or failure to provide proof of insurance, etc., which carries a fine or jail time, is a penalty — and is, indeed, "converting a right into a crime."

A corporate entity, whether it be a city, state, or U.S. Government, cannot testify as an injured party, thus cannot be cross-examined. As an individual one can speak for a corporation but cannot be an injured party.

If alleged Defendant is to be subject to the alleged "criminal acts" it is concluded that no act was in fact broken.

Because there is no ratification of commencement, no corpus delecti, no plaintiff, lack of jurisdiction over the person, lack of jurisdiction over the subject matter, and insufficiency of service of process, thus no justiciable controversy or cause of action before the Court, the Court shall dismiss the complaints filed against me with prejudice.

Submitted this 20 day of May 2022

As a woman of record. Sui Juris;


All Rights Reserved without Prejudice


Diane: Killian-Allan Affiant

Certificate of service

This is to certify that a true and correct copy of the foregoing has been delivered this 20 day of May 2022, to the court not of record at the following address:

Davis County Justice Court
Judge John Carl Ynchausti
800 W State St.
Farmington, UT 84025


Signature / Seal

Certificate of Service

I certify that I filed with the court and am serving a copy of this Request to Submit on the following people.

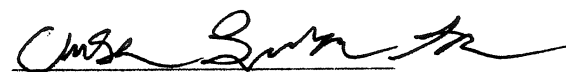
Persons Name

Service Method Service Address

Service Date

6-8-22 9 CA

<input type="checkbox"/> Mail <input checked="" type="checkbox"/> Hand Delivery <input type="checkbox"/> E-filed <input type="checkbox"/> Email <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		
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Signature Printed Name

06/09/2022 Date